TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 180.

CALVIN A. CALHOUN, APPELLANT,

vs.

OSCAR H. VIOLET.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF OKLAHOMA.

FILED OCTOBER 11, 1897.

(16,691.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 7, 1898.

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1 TERRITORY OF OKLAHOMA:

In the Supreme Court of said Territory.

CALVIN A. CALHOUN, Plaintiff in Error,
vs.
OSCAR H. VIOLET, Defendant in Error.

The plaintiff in error, Calvin A. Calhoun, states that on the trial of the above-entitled case many and manifest errors intervened in the rulings and judgment of the court, among which plaintiff assigns the following, in and by which his rights and interest were greatly prejudiced and affected:

1st. The court below erred in sustaining the demurrer interposed by the said defendant below, defendant in error, to the plaintiff's petition and in dismissing said petition on the ground that the matters and things as set out in said petition were not sufficient in law to constitute a cause of action against the said defendant; to which ruling and judgment of the court in sustaining said demurrer and dismissing said suit the plaintiff at the time then and there excepted and still excepts. Plaintiff in error herewith files and causes the clerk of the district court for the third judicial district, by which said court, sitting within and for Oklahoma county, said decision was made and in which said suit was commenced and tried, to certify up the original papers in said cause which are made a part of this petition in error, and by an inspection of which and on the face of said papers the error of the court below in sustaining the aforesaid demurrer to plaintiff's petition, as set out in the order and judgment of said court, is manifest, as said petition does on its face state a good and sufficient cause of action entitling the plaintiff in error to the relief prayed for in his said petition, and the court below erred in not overruling said demurrer and requiring the defendant to answer the said petition; that the judgment of the said district court is contrary to law.

2 Wherefore the plaintiff prays that for the manifest error aforesaid that the judgment of the court below be reversed and set aside, and that said cause be remanded to the court below to proceed to hear and try said cause and render such judgment and *and* decree as in equity and law may be right and proper on such trial.

AMOS GREEN & SON,
Attorneys for Plaintiff in Error.

Endorsed: Calvin A. Calhoun *vs.* Oscar H. Violet. Petition in error. Filed March 9th, '96. Edgar W. Jones, clerk supreme court. Amos Green & Sons, attorneys for plaintiffs in error.

3 TERRITORY OF OKLAHOMA, }
Oklahoma County. }

In the District Court for the Third Judicial District, Sitting within and for the County Aforesaid.

CALVIN A. CALHOUN, Plaintiff, }
against } Petition.
OSCAR H. VIOLET, Defendant. }

The plaintiff, Calvin A. Calhoun, for cause of action against the defendant, Oscar H. Violet, states that the plaintiff is a citizen of the United States; that on and before the 23rd day of April, 1889, he was over twenty-one years of age and the head of a family; that prior to the date aforesaid he never had the benefit of a homestead; that he had all the qualifications under the acts of Congress passed and approved March 1st and 2nd, 1889, and other laws of the United States, entitling him to take and hold a homestead in the lands in the then Indian Territory, now Oklahoma, opened to settlement under the aforesaid acts of Congress and the proclamation of the President of the United States in pursuance of said acts, dated March the 23rd, 1889; that plaintiff is an honorably discharged Union soldier, having enlisted for three years in the Union army in the late civil war and served in said army for the term of about eighteen months, and was honorably discharged because of wounds received in battle; that since his said discharge he has always remained loyal to the Government of the United States; that as such honorably discharged Union soldier he is embraced in the exception and proviso contained in section thirteen of the act of Congress of March the 2nd, 1889, which said proviso is in the following words: "That the rights of honorably discharged Union soldiers and sailors in the late civil war as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes shall not be abridged."

4 The plaintiff further states that said section of the Revised Statutes of the United States referred to as section 2304 provides as follows: "Every private soldier and officer who has served in the Army of the United States during the recent rebellion for ninety days and was honorably discharged, and has remained loyal to the Government, including the troops mustered into the service of the United States by virtue of the third section of an act approved February the thirteenth, eighteen hundred and sixty-two, and every seaman, marine and officer who has served in the Navy of the United States or in the marine corps during the rebellion for ninety days, and who has been honorably discharged and has remained loyal to the Government, shall, on compliance with the provisions of this chapter as hereinafter modified be entitled to enter upon and receive patent for a quantity of public lands, not exceeding one hundred and sixty acres, or one quarter section to be taken in compact form, according to the legal subdivisions including the alter-

nate sections of public land along the line of any railroad, or other public work not otherwise appropriated. And other lands subject to entry under the homestead laws of the United States; but such homestead settler shall be allowed six months after locating his homestead and filing his declaratory statement within which to make his entry and commence his settlement and improvement."

The plaintiff states that under the provisions of the aforesaid section and the homestead laws then in force he was, at the time of the opening of the aforesaid lands to settlement under the acts of Congress aforesaid and the proclamation of the President of the United States and the provisions of the homestead laws of the United States at the time of the passage of said section- 2304 and 2305, duly qualified to enter upon, as an honorably discharged Union soldier, as aforesaid, and make a homestead entry of one quarter section of the lands so opened on the 22nd day of April, 1889, at the proper land office, and that his qualification to take and enter a homestead of one quarter section of any public lands of the United States, subject to homestead entry as defined and required under the Revised Statutes of the United States, were not in any manner enlarged or abridged by the prohibitory provision of section thirteen of the act of March 2nd, 1889, which said prohibitory provision of said section thirteen in relation to entry and occupancy of any of said lands described in said section was and is a qualification and not a penalty, and honorably discharged soldiers are expressly excepted from its provisions in relation to additional qualifications in said section by the proviso hereinbefore set out. The plaintiff further states that, being a duly qualified entryman, as aforesaid, he did on the 23rd day of April, 1889, at the United States land office at Guthrie, Oklahoma, make homestead entry number nineteen for lot- 6, 7, 8, 9, and 10 of section three, township eleven N., range 3 west, in the aforesaid land district, subject to entry at the aforesaid land office, which said tracts of land are in what is now Oklahoma county, in said Territory of Oklahoma, and adjoin the said city of Oklahoma City, and are of the present value of twenty-five thousand dollars; that on the 23rd day of April, 1889, the plaintiff duly inaugurated his settlement upon said lands entered, as aforesaid, as his homestead and commenced making valuable improvements thereon, and has since said date aforesaid up to the present time continuously resided on said land as his homestead and now resides upon the same, and has in all respects complied with the requirements of the homestead law; that his improvements are of the value of about one thousand dollars.

That by letter "C" from the Commissioner of the General Land Office of the United States, at Washington city, D. C., dated February the 17th, 1890, the plaintiff was notified that his entry aforesaid was suspended for the reason that the lands entered, as aforesaid, although only one quarter section and it being in compact form and conforming to the Government survey, yet, being on both sides of the North branch of the Canadian river, and that said river was a meandered stream and entries could not be extended across it, and the

6 plaintuff was by said Commissioner aforesaid required, under a misapprehension and mistake of the law, facts, and rules of the department, to relinquish the lands so entered and settled upon as his homestead, as aforesaid, on one side or the other of said stream, and under both written and verbal protest, and to prevent an illegal cancellation of his entire entry, he did under compulsion of the aforesaid illegal requirement relinquish to the United States lot number ten, lying and being on the south side of said river and containing sixteen and twenty-four hundredth- acres of land.

The plaintiff further states that said river was and is not a meandered stream or river, and that said requirement by the said Commissioner aforesaid was made and said letter written and sent out by said Commissioner under a misapprehension of the law and the facts; and said requirement was contrary to law and beyond the powers and jurisdiction of said Commissioner; and said relinquishment, being made by the plaintiff under protest, as aforesaid, and by illegal requirements and compulsion, as aforesaid, and under mistake of the law and facts by said Commissioner, was and is illegal and void and did not divest the plaintiff of his right and interest and equity in and to said tract of land acquired by his entry and settlement aforesaid.

That plaintiff afterwards, and when said mistake on the part of said Commissioner of the General Land Office was discovered, filed with said Commissioner an application to correct said mistaken and forced relinquishment and to reinstate plaintiff's filing on said land.

That said Commissioner has wholly neglected, failed, and refused to take any action on the said application. A copy of said application is herewith filed, marked Exhibit "B," and made a part of this petition. And in violation of plaintiff's rights and of law, equity, and good faith, and with a full knowledge of all the facts aforesaid, the defendant, Oscar Violet, was wrongfully permitted and did enter said lot number ten aforesaid, and since his said entry has made final proof and received a final certificate for said lot number ten, which has passed to him all the right, title, and interest of the United States and the *and the* title to said tract
7 of land, and said final certificate as to the United States is equivalent to a patent and vests the title in the holder thereof; that said defendant had full information and knowledge of all the facts aforesaid and of the misapprehension under which the aforesaid relinquishment was made, and of the fact that plaintiff had applied to have the same reinstated, and that plaintiff continued to claim said lot number ten as covered by his entry aforesaid; and that by reason of the illegal requirement aforesaid and the mistake and misapprehension under which it was made rendered said relinquishment voidable and did not divest plaintiff's equity. The plaintiff states that said defendant obtained the entry and final certificate aforesaid in fraud of plaintiff's rights and equities in and to said land and in violation of law and of the superior equity of the plaintiff, and holds the same in trust for plaintiff. The plaintiff further states that on May 21st, 1889, one Theodore W. Echelberger

filed a contest against the plaintiff, alleging prior settlement and charging that plaintiff was a disqualified entryman by reason of having, as said contestant charged, entered the Oklahoma country during the prohibited period, in violation of section thirteen of the act of Congress of March the second, 1889; all of which plaintiff states is wholly false and unproved by any preponderance of evidence, except the fact that plaintiff on the 20th day of April, 1889, left Arkansas City on the railroad train; came to Oklahoma Station on said train, arriving about five o'clock p. m. of the 20th and remaining all night, leaving next morning about half past 8 o'clock a. m. on the train, returning to Arkansas City, where he remained until April 22nd, 1889, leaving said city on the railroad train which entered Oklahoma after twelve o'clock noon on said day, reaching Guthrie, in said Oklahoma, on the afternoon of April 22nd, and remaining at Guthrie until April 23rd, when he filed homestead entry number nineteen on the land heretofore described, and came to Oklahoma Station and went on the land and made settlement under his said entry on the afternoon of April 23rd, 1889. The plaintiff further states that on May 27th, 1889, one James McCor-
nack also filed a contest against the plaintiff and said
8 Echelberger, alleging that both were disqualified and had entered the Oklahoma country during the prohibited period and in violation of said section thirteen of the aforesaid act of Congress of March 2nd, 1889; and further charging that the plaintiff had made his said entry of said land for speculation purposes; all of which charges are false and were never established by any credible evidence; that on June 20th, 1890, one Thomas J. Bailey filed a contest, charging the plaintiff and Echelberger had violated the law by entering the said Territory during said prohibited period; which said charge, as to the plaintiff, was untrue, except as hereinbefore stated; also charging said McCornack with filing his aforesaid contest for speculation purposes and claiming that he, Bailey, was the first legal settler; that on January 25th, 1890, one Linthisum filed a contest against said lot number ten, alleging the segregation of said lot from lots 6, 7, 8, and 9 by the meanderings of the North Canadian river, which was a misapprehension, said river not being a meandering stream.

That on October the 30th, 1890, all parties to said contests appeared at the local United States land office in Oklahoma City, Oklahoma Territory, and the trial of said contests was had before the register and receiver of said office, and said register and receiver rendered a decision finding that the plaintiff herein and the aforesaid Echelberger were both disqualified to make entry of lands in the Territory of Oklahoma; that said contestant Bailey had failed to establish his claim of prior settlement on the land, it having been previously segregated by the entry of this plaintiff, and dismissed the contests of Echelberger and Bailey and Linthicum and recommended that the entry of this plaintiff be cancelled, and that contestant McCornack be awarded a preference right of filing on said land.

From this decision appeals were taken by this plaintiff and the

other parties to the honorable Commissioner of the General Land Office, at Washington city, D. C. That on the — day of ——, 1893, the said Commissioner rendered a decision affirming the
9 aforesaid decision of the register and receiver of the local land office. In rendering said decision aforesaid the said Commissioner does not review or pass upon the evidence or legal questions involved. From said decision of the Commissioner aforesaid appeals were taken to the honorable Secretary of the Interior, and on the 22nd day of November, 1893, the Assistant Secretary of the Interior rendered a decision affirming that of the register and receiver without exam-ing or passing upon the questions of law or fact and the rulings assigned as errors in said appeal, and makes the following statement why he does not review or pass upon any of the questions before him on said appeal: "On the questions of fact raised herein the evidence is conflicting, and it appearing that the concurring conclusions of your office and the local officers are 'not clearly erroneous,' in such cases it is against the policy of the department to interfere. There judgment of your office is affirmed."

That after the aforesaid decision by the honorable Assistant Secretary of the Interior a petition and motion for review was filed with the Secretary of the Interior, and on July 13th, 1894, he rendered a decision thereon, in which decision the honorable Secretary misapprehends both the law and the facts. A copy of said erroneous decision is herewith filed to show the mistakes and errors of said Secretary. The plaintiff states that the said Secretary has entirely misapprehended and misstated the facts as shown by the evidence. In thus stating the testimony given by this plaintiff, the honorable Secretary says: "That on his arrival at Oklahoma Station (meaning plaintiff's arrival) on Monday, April 22nd, 1889, he went with his son directly to the tent which his son had erected on the land in contest, and that he, the entryman, leaving his son in charge of the tent and the land, went immediately to the Guthrie land office and arrived there in time to secure homestead entry No. 19 on said land." This is a mistake. Plaintiff gave no such evidence, but testified in substance as follows: "That he left Arkansas City on the 22nd day of April, 1889, on the train that entered the Territory of Oklahoma after twelve o'clock noon of said day; that
10 he stopped at Guthrie, and on April the 23rd, 1889, made his filing at the U. S. land office at Guthrie, and on the afternoon of April 23rd, 1889, and after having made his said entry, he went to Oklahoma Station, and then went upon the land in controversy on the afternoon of the 23rd; that he did not know that his son had settled upon or intended settling upon said tract of land at the time he made his said entry, and that no agreement or understanding existed between him and his son in regard to the latter going upon and holding said tract of land until the plaintiff could file thereon, nor did plaintiff know when he made his said entry that his son was on said tract of land. Plaintiff says there was no evidence showing any collusion between plaintiff and his son, who is shown by the evidence to have been at that time a man about thirty years of age, which in the evidence of this plaintiff and his said son

given on the trial of said contests they expressly testify that there was none, and the honorable Secretary seems to and did act and render his said decision on an entire misapprehension of the facts as established by the evidence.

The plaintiff further states that the honorable Secretary also in said decision misapprehended the law applicable to the facts of the true case and also applicable to the erroneous statement of facts made by said Secretary in holding that such statement of facts would in law "be fatal to plaintiff's right to make entry of said land," even if plaintiff had not been, as heretofore stated, an honorably discharged Union soldier, excepted from the additional qualification provided by the prohibitory clause of said section thirteen of the act of Congress of March 2nd, 1889; and under the law and the decision of the Supreme Court of the United States the plaintiff, having, as admitted and shown by the uncontradicted and positive evidence on the trial of said contest cases that plaintiff was outside the limits of said territory, opened as aforesaid, and came in after twelve o'clock noon on said April the 22nd, 1889, was not by reason of his previous admitted entry, as hereinbefore stated, disqualified, but was within the spirit of the law a qualified entryman.

11 The plaintiff says that all the decisions and rulings hereinbefore set out holding that this plaintiff was not a duly qualified entryman on the evidence taken in the contest cases aforesaid were made under a misconstruction of both the law and the facts and are in law erroneous, illegal, and to the great prejudice of the rights of this plaintiff: that the cancellation of his aforesaid entry was wrongfully made, under a mistake and misapprehension of both the law and facts, and that said mistaken and erroneous cancellation did not divest the plaintiff of his superior equity and right in and to said lands, and that the rights acquired by the defendant, Oscar Violet, as aforesaid, by his aforesaid entry, final proof, and final certificate aforesaid are in equity held by him in trust for this plaintiff. The plaintiff states that all the aforesaid rulings and decisions of the Land Department were made under the misapprehensions of the law and fact, and the questions raised by the appeals and motion for review of the plaintiff were never examined or reviewed by the honorable Commissioner and Secretary of the Interior and the facts found and the law properly applied to the facts; and plaintiff's homestead filing, made as aforesaid, was illegally cancelled, and said decisions are erroneous by reason of the unfairness, misconstruction, and misapprehension aforesaid and are contrary to law and equity, and plaintiff's equities and rights in and to said land cannot be divested and taken away except by the adjudication of a court of competent jurisdiction; that plaintiff's rights and equities, as hereinbefore set out and stated, are in no manner destroyed or taken away by the aforesaid wrongful, mistaken decisions and the aforesaid forced and illegal relinquishment and the aforesaid erroneous and mistaken cancellation of plaintiff's said entry. The said register and receiver and the Commissioner of the General Land Office and the honorable Secretary of the Interior each and all erred and misapprehended the law:

First. In holding that plaintiff, being an honorably discharged Union soldier, as aforesaid, and filing with his said application to enter said land the requisite soldier's affidavit establishing
12 said facts, was still subject to the new and additional qualification required by what is known and called the prohibitory provisions of section thirteen of the act of Congress of March the 2nd, 1889, the plaintiff being expressly by the aforesaid proviso of said section and act excepted from its provision and from any and all abridgement of his rights as defined by the aforesaid section- 2304 and 2305 of the Revised Statutes of the United States.

Second. That the ruling, holding, and sending out of the circular letter aforesaid by the honorable Commissioner of the General Land Office of the date aforesaid that the North branch of the Canadian river was a meandered stream, and requiring the plaintiff, under penalty of cancellation of his filing, to relinquish the land embraced in his said entry on one side or the other of said stream, was a misapprehension of the facts and a misconstruction of the law as to what constituted a meandered stream and was contrary to law.

Third. The holding and decision by the officers of the Land Department and the Hon. Secretary of the Interior that any temporary entry into the Territory to be opened between the 2nd day of March and 22nd day of April, at twelve o'clock noon, 1889, where the party was outside the Territory prior to and at the time when entry could legally be made at the said hour of twelve o'clock noon, and came in rightfully after said hour, was disqualified by reason of the previous entry or passage on the railroad train from Arkansas City, in the State of Kansas, on the 20th day of April, 1889, to Oklahoma City and a return on a trian in said railroad on June 21, 1889, to Arkansas City, is a misconception of the law and a misapprehension of the spirit and purpose of the prohibitory provision of the aforesaid section of said act of Congress and erroneous.

Fourth. The holding and decision that because the son of plaintiff, a man thirty years of age and not under the control of the plaintiff, and without any collusion or agreement of plaintiff, after twelve o'clock noon on April 22nd, 1889, disqualified the
13 plaintiff and rendered his said entry collusive and fraudulent, was and is erroneous and contrary to law and equity and all rules applicable to the construction of evidence, and in violation of the maxims and rule of law that fraud is never presumed but must be clearly proved.

Fifth. The rulings and findings of the register and receiver and the Commissioner as to what are the rights and privileges of a homestead entryman in clearing land and selling timber not needed for improvements, from such clearing, are also erroneous and a misconception of the homestead law.

Sixth. And the rulings on the evidence and the law made by the departments aforesaid were and are contrary to the evidence, law, and equity of the case and violation of the rights of the plaintiff, and the aforesaid cancellation of his said entry was erroneous, illegal, and contrary to the law and evidence of the case.

Wherefore the plaintiff says that the title acquired, as aforesaid,

by the said defendant is subject to the superior equity of the plaintiff, and that he is in equity entitled to have a resulting trust declared and said tract of land embraced in lot number ten conveyed to the plaintiff by proper decree, and for judgment for costs; and he prays for all other and further relief which to equity pertaineth and the nature of the case requires.

AMOS GREEN & SON,
Attorneys for Plaintiff.

Endorsed: Filed in district court, Oklahoma county, O. T., Mar. 6, 1895. W. H. Ebey, clerk, by J. B. Sanders, deputy.

14 EXHIBIT "C."

(Copy.)

THEODORE ECHELBERGER ET AL.
vs.
CALVIN A. CALHOUN.

JULY 13, 1894.

The Commissioner of the General Land Office.

SIR: The case is now before me upon two motions for review of departmental decision of Nov. 22, 1893—one filed on Januarv 16, 1894, by C. A. Calhoun, which acknowledged service of the adverse decision on Dec. 23, 1893. I have entertained both motions.

The testimony of Calvin A. Calhoun himself, as quoted by Messrs. Perkins & Chandler, his attorneys, on pages 17 and 18 of their brief, shows that he arrived at Oklahoma Station from Arkansas City on Saturday, April 20, 1889, after dark, and remained there that night, and left for Arkansas City Sunday morning at 8.30 o'clock; that on his arrival at Oklahoma Station on Monday, April 22, 1889, he went with his son directly to the tent which his son had erected on the land in contest, and that he, the entryman, leaving his son in charge of the tent and the land, went immediately to the Guthrie land office and arrived there in time to secure homestead entry No. 19 on said land. Mr. Calhoun's own testimony is fatal to his right to make entry of said land or acquire any right thereto. His motion for review is denied.

Bailey's motion for review is based upon t vo grounds:

"1. That the decision is against the weigh of the facts and contrary to law.

"2. That the register and receiver allowing Calhoun to make homestead entry on April 23, 1889, did not thereby segregate the land in contest from the public domain."

The papers upon which Calhoun's entry was allowed were regular in form and sufficient in substance and *prima facie* valid.

15 The local officers were obliged to allow the entry and mark the land taken upon their tract book and to refuse to make any other inconsistent entry on the same tract.

It was not decided that Calhoun was a sooner until Nov. 22,

1893, when the Secretary affirmed the decision of the Commissioner, and the tract book is not even yet clear of Calhoun's entry in consequence of the pending motions for review. The tract in question was segregated by the H. E. of Calhoun, although it may have been improperly allowed.

No valid reason is assigned by Bailey why the mass of testimony taken in this case should be reopened and considered for the fourth time. The local officers, the Commissioner, and the First Assistant Secretary have each in turn carefully examined the recorded testimony. Bailey, as the 3rd contestant, is contented with their concurrent findings against Calhoun and Echelberger and complains only of their findings in favor of McCornack, who was the second contestant. The finding is that Bailey failed to prove his allegation against McCornack. There is nothing in the papers before me to justify the belief that injustice has been done, or that a fourth examination of the testimony will change the result.

Bailey's motion for review is denied. The papers are herewith returned.

Very respectfully, HOKE SMITH, *Secretary.*

Endorsed: Filed in district court, Oklahoma county, O. T., Mar. 6th, 1895. W. H. Ebey, clerk, by J. B. Sanders, deputy.

16

(Copy.)

OKLAHOMA CITY, OKLAHOMA, *May 15th*, 1893.

Hon. S. W. Lamoreaux, Commissioner of General Land Office.

SIR: Your petitioner, Calvin A. Calhoun, residing near Oklahoma City, O. T., respectfully represents that on April 29th, 1889, he made homestead entry No. 19 on lots 6, 7, 8, 9, and 10, sec. 2, tp. 11, R. 3 W., at the land office at Guthrie; further. that by letter "C" from the General Land Office of February 17th, 1890, said entry was suspended for the reason that the lands entered were on both sides of a meandered stream, viz., the North branch of the Canadian river, and your petitioner was induced to relinquish said lot 10 to the Government on March 17th, 1890.

Thereupon said entry as to said lot 10 was cancelled.

Your petitioner is now informed that said North branch of the Canadian river is not a meandered stream; that the suspension of his said entry was made under a misapprehension of the facts in the case, and that a relinquishment by him of lot 10 should not have been demanded.

Your petitioner would state further that said lot 10 contains sixteen and 24 one-hundredths acres, and is a very essential and important portion of his claim. His entire entry, including said lot 10, embraces only $148\frac{14}{100}$ acres, which is $11\frac{86}{100}$ less than the area allowed under the homestead law.

For the reasons stated your petitioner asks that he be allowed to withdraw his said relinquishment, and that his entry No. 19, as to lot 10, be reinstated upon the records of the General Land Office.

CALVIN A. CALHOUN.

TERRITORY OF OKLAHOMA, } ss:
County of Oklahoma, }

Calvin A. Calhoun, being fuly sworn, deposes and says that the statements made by him in the foregoing petition are true and correct, as he verily believes.

——.

16½ Sworn to and subscribed before me this 15th day of May 1893.

J. MILTON,
Notary Public.

Com. expires Jan. 2nd, 1895.

17 "H."
M. S. W.
Doc. 4, case 6323.

4–207.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April* 26, 1895.

I, Silas W. Lamoreux, Commissioner of the General Land Office, do hereby certify that the annexed copies of soldier's affidavit and certificate of service in H. E. No. 19, of Calvin A. Calhoun, and of his relinquishment of said entry as to lot 10, executed March 17, 1890, in the case of Theodore W. Echelberger *et al. vs.* Calvin A. Calhoun, for lots 6, 7, 8, 9, and 10, in sec. 3, tp. 11 N., R. 3 W., Oklahoma, Oklahoma, are true and literal exemplifications of the originals now on file in this office, and the copy of office letter (C), dated February 17, 1890, relative to said entry, is a true and literal exemplification of the press copy of the original.

In witness whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] S. W. LAMOREUX,
Commissioner of the General Land Office.

18 (4–065.)

Soldiers' and sailors' homesteads under act June 8, 1872.

Affidavit.

No.—

LAND OFFICE AT GUTHRIE, O. T., *April* 23, 1889.

I, Calvin A. Calhoun, of St. Joseph, Mo., do solemnly swear that I am a head of a family, of the age of twenty-one years, and a citizen of the United States; that I served for ninety days in Co. H of the Seventh Missouri cavalry regiment, United States volunteers;

that I was mustered into the United States military service in September, 1861, and was honorably discharged therefrom in November, 1862; that I have since borne true allegiance to the Government; that *he is* unable to furnish copy of *his* discharge or to procure evidence of *his* witnesses as to *his* service in army, and that I have made my application No. — to enter a tract of land under the provisions of the act of June 8, 1872, giving homesteads to honorably discharged soldiers and sailors, their widows and orphan children; that I have made said application in good faith, and that I take said homestead for the purpose of actual settlement and cultivation, and for my own exclusive use and benefit and for the use and benefit of no other person or persons whomsoever, and that I have not heretofore acquired a title to a tract of land under this or the original homestead law approved May 20, 1862, or the amendments thereto, or voluntarily relinquished or abandoned an entry heretofore made under said acts, so help me God.

CALVIN A. CALHOUN.

Sworn and subscribed to before me, John I. Dille, register of the land office at Guthrie, this 23rd day of April, 1889.

JOHN I. DILLE, *Register.*

19

Certificate of Service.

Illustration of eagle.

To all whom it may concern:

This is to certify that Calvin A. Calhoun, who was enrolled on the 1st day of September, one thousand eight hundred and sixty-one, to serve three years, was discharged on the 10th day of September, 1862, by reason of disability, at Sedalia, Missouri, while holding the grade of private in Company "H," 7th regiment of Missouri cavalry colunteers, formerly Co. "A," 22nd Missouri inft.

This certificate is given upon evidence that the original discharge has been lost or destroyed, and in all cases upon the condition imposed by the act of Congress approved March 3, 1873, that it "shall not be accepted as a voucher for the payment of any claim against the United States for pay, bounty, or other allowance or as evidence in any other case."

Given at the War Department, Washington, D. C., this 19th day of December, A. D. 1889.

By authority of the Secretary of War.

F. C. AINSWORTH,
Captain and Ass't Surgeon U. S. A.

3-566.
Mac. 88720.

Endorsed: 1890. 155,918-1. Soldier's certificate of service, 7th Mo. cavalry.

20 No. —.

Received for filing Mar. 18, 1890, at Guthrie land office, Ind. Ter.

Relinquishment.

INDIAN TERRITORY, }
Oklahoma City, } ss:

Know all men by these presents that, pursuant to instructions contained in circular letter of Febr. 17th, '90, issued from the Gen. Land Office and to me directed, I, Calvin A. Calhoun, hereby relinquish to the United States all that portion of land on the right bank of the North Canadian river known and designated as lot No. (10) ten, in the N. W. quarter of section 3, township 11 N., range 3 west, Guthrie land district, the same having been embraced within my original entry No. 19, dated April 23d, A. D. 1889.

CALVIN A. CALHOUN.

On this 17th day of March, A. D. 1890, before me personally came Calvin A. Calhoun, to me known to be the individual described in and who executed the above instrument in writing, and acknowledged that he executed the same for the purposes therein mentioned.

WM. A. MONROE,
U. S. Com'r, Dist. Kansas.

Cuicuit Court
Seal,
District of Kansas.

Cancelled by relinquishment March 18, 1890, at 11.40 a. m.

Endorsed: No. —. Received for filing Mar. 18, 1890, at Guthrie land office, Ind. Ter. 1890. 46424-1.

21 Refer in reply to this initial, C.

DEPARTMENT OF THE INTERIOR, W. H. L. J. P.
GENERAL LAND OFFICE, J. V. W. C. G. T.
WASHINGTON, D. C., *Feb.* 17, 1890. J. C.

Address only the Commissioner of the General Land Office.

Register & receiver, Guthrie, Indian Ty.

GENTLEMEN: The following homestead entries are suspended for the reason that, in each case, the land entered lies on both sides of a meandered stream, and the entry was therefore improperly allowed:

No. 19, filed April 23, 1889, by Calvin A. Calhoun, for lots 6, 7, 8, 9, & 10, sec. 3, tp. 11 N., R. 3 W.

No. 70, filed April 24, 1889, by John W. Clifford, for lots 3, 4, 5, 6, 7, 8, and S. E. ¼, sec. 25, *yp.* 13 N., R. 2 W.

No. 87, filed April 25, 1889, by Wm. H. Cunningham, for lots 3, 4, 5, 6, 7, & N. W. ¼, sec. 35, tp. 12 N., R. 3 W.

No. 100, filed April 25, 1889, by John H. Hatfield, for N. E. ¼ or lots 1, 2, 3, 7, 13, 15, 17, & 18, sec. 2, tp. 11 N., R. 3 W.

This party has relinquished lots 2 & 3 of said section, but lot 1 remains on the opposite side of the stream from the main portion of his entry.

No. 102, filed April 25, 1889, by Lewis Rockwood, for S. W. ¼ or lots 8, 9, 10, & S. ½, S. W. ¼, sec. 5, tp. 11 N., R. 3 W.

No. 119, filed April 25, 1889, by John C. Lindsay, for N. E. ¼ or lots 12, 16, 17, 18, & 19, sec. 1, tp. 12 N., R. 1 W.

No. 120, filed April 25, 1889, by Ulysses G. Allen, for N. W. ¼ or lots 1, 2, 3, 13, 14, & N. E. ¼, N. W. ¼, sec. 26, tp. 13 N., R. 1 W.

No. 122, filed April 25, 1889, by Fhielden V. Jones, for S. E. ¼ or lots 3, 4, 5, & 6, sec. 35, tp. 13 N., R. 1 W.

22 No. 139, filed April 25, 1889, by Leonidas N. Deweese, for N. E. ¼ or lots 1, 2, 7, & W. ½, N. E. ¼, sec. 35, tp. 13 N., R. *L* W.

No. 179, filed April 26, 1889, by Fletcher M. Fariss, for S. E. ¼ or lots 1, 16, 17, and W. ½, S. E. ¼, sec. 5, tp. 11 N., R. 3 W.

No. 187, filed April 26, 1889, by John A. J. Baugness, for N. W. ¼ or lots 4, 5, 6, 7, & 11, sec. 5, tp. 11 N., R. 3 W.

No. 932, filed May 7, 1889, by Alice Nix, for N. E. ¼, for lots 1, 2, 3, & W. ½, N. E. ¼, sec. 27, tp. 13 N., R. 1 W.

You will notify the claimant in each case of this fact and allow him thirty days from receipt of notice in which to elect which portion of his claim he will relinquish, so that the land remaining will be confined to one side of such stream. Should any of the parties desire to do so, he may relinquish his entire entry; in which event an application to make a second entry of a specific tract will receive due consideration.

If any of the entryman fail or refuse to take action within the time specified, his entry will be held for cancellation. Notify the parties in accordance with circular of Oct. 28, 1886 (5 L. D., 204), and in due time transmit the evidence of such notice, with your report of the action taken, to this office.

Very respectfully,

L. A. GROFF,
Commissioner.

Endorsements: Copy of application for reinstatement on lot 10, in sec. 3, tp. 11, R. 3 W., by Calvin A. Calhoun. Filed in district court, Oklahoma county, O. T., Mar. 6, 1895. W. H. Ebey, clerk, by J. B. Sanders, deputy. No. 1088. Calvin A. Calhoun *vs.* Oscar H. Violet. Petition. Filed in district court, Oklahoma county, O. T., Mar. 6, 1895. W. H. Ebey, clerk, by J. B. Sanders, deputy. Amos Green & Son, attorneys for plaintiff.

23 In the District Court of the Third Judicial District within and for the County of Oklahoma, Territory of Oklahoma.

CALVIN A. CALHOUN, Pl'ff,
vs.
OSCAR H. VIOLET, Def't. } Demurrer.

Now comes the said defendant, Oscar H. Violet, and demurs to the petition of the said plaintiff, Calvin A. Calhoun, filed in this action, and for cause and ground of said demurrer says:

That said petition does not state facts sufficient to constitute a cause of action in favor of said plaintiff and against this defendant.

SELWYN DOUGLAS,
Attorney for Defendant.

Endorsed: No. 1088. Calvin A. Calhoun, pl'ff, *vs.* Oscar J. Violet, def't. Demurrer. Filed in district court, Oklahoma county, O. T., Nov. 8, 1895. W. H. Ebey, clerk, by T. A. Neal, deputy.

24 On May 11th, 1895, the same being the 46th judicial day of the March, 1895, term, the following proceedings were had:

C. A. CALHOUN
vs. } 1088.
O. H. VIOLET.

Plaintiff agrees that defendant may withdraw motion filed herein and file demurrer.

25 And on September 4th, 1895, the following proceedings were had:

CALHOUN
vs. } 1088.
VIOLET.

Continued for term.

26 And on November 11th, the same being the 7th judicial day of the November, 1895, term, the following proceedings were had:

C. A. CALHOUN
vs. } 1088.
O. H. VIOLET.

Comes now all parties hereto, and the case being called for hearing, the same is argued and passed for determination.

27 And on November 19th, 1895, the following proceedings were had:

C. A. CALHOUN
vs. } 1088.
O. H. VIOLET.

Demurrer to petition sustained. Exceptions allowed. 5 days given to amend petition.

28 And on December 23rd, 1895, the following proceedings were had:

C. A. CALHOUN
vs.
O. H. VIOLET. } 1088.

Counsel present. Demurrer sustained. Exceptions allowed. Appeal granted. Notice of appeal given.

29 And on December 26th, 1895, the following proceedings were had:

CALVIN A. CALHOUN
vs.
OSCAR H. VIOLET. } 1088.

Now, on this 23rd day of December, 1895, it being one of the days of the regular November, 1895, term of said court, this cause came on to be heard upon the demurrer filed by the defendant in said action to the petition of said plaintiff; and the court, having heard the argument of counsel and being fully advised in the premises, doth sustain said demurrer; to which order of said court sustaining said demurrer the said plaintiff duly excepted and still excepts, and upon application the said plaintiff is given five days in which to amend his petition, and the said defendant to have twenty days thereafter in which to plead.

H. W. SCOTT,
Judge of said Court.

O K.
AMOS GREEN & SON,
Att'ys for Plaintiff.

30 TERRITORY OF OKLAHOMA, } ss:
Oklahoma County,

I, W. H. Ebey, clerk of the district court of the third judicial district within and for Oklahoma county, said Territory, do hereby certify that the within petition of plaintiff and demurrer of defendant are the original petition of plaintiff and demurrer of defendant filed in this office — to be a true, full, and complete copy of the proceedings in open court, as shown by the records of my office.

Witness my hand and the seal of said court, affixed at my office, in Oklahoma City, O. T., this the 9th day of March, 1896.

[SEAL.]

W. H. EBEY, *Clerk,*
By R. HARRISON, *Deputy.*

Case-made endorsed: Filed March 9, 1896. Edgar W. Jones, clerk supreme court.

30½ CALVIN A. CALHOUN
vs.
OSCAR H. VIOLET. } #435.

And now, to wit, on this the tenth day of June, A. D. 1896, the above cause was at this time taken up on the record and briefs.

CALVIN A. CALHOUN
vs.
OSCAR H. VIOLET. } # 435.

And now, to wit, on this the fourth day of September, A. D 1896, the above cause having come for final decision, and the court being fully advised in the premises, it is therefore considered, ordered, and adjudged that the judgment of the lower court be affirmed, with costs to the above plaintiff in error.

Opinion by Dale, C. J. Justice Scott, having presided at the trial of the cause in the court below, not sitting; the other justices concurring.

31 In the Supreme Court of the Territory of Oklahoma.

CALVIN A. CALHOUN
vs.
OSCAR H. VIOLET.

Syllabus.

1. Homestead—Union soldiers.—Under the act of March 2, 1889, the provision of sec. 13, which reads as follows: "That * * * until said lands are open to settlement by proclamation of the President no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall ever be permitted to enter any of said lands, or acquire any rights thereto," is applicable to honorably discharged Union soldiers to the same extent as it is to all other citizens.
2. Equity—Findings of fact by Land Department.—Where a proceeding is brought in a court of equity for the purpose of declaring the holder of the legal title to a tract of land entered under the provisions of the homestead law of the United States a trustee for the benefit of one who claims a superior title in equity, the facts as found by the Land Department will be accepted as conclusive by the court.

Suit in equity, brought to declare the holder of the legal title a trustee for the benefit of one who claims a superior title in equity. Decision of the lower court affirmed. The opinion states the facts.

Amos Green & Son, attorneys for plaintiff in error.

Selwyn Douglas and McGreggor Douglas, attorneys for defendant in error.

DALE, *C. J.:*

This is an action commenced in the district court of Oklahoma county on March 6, 1895, by Calvin A. Calhoun against Oscar H. Violet, for the purpose of obtaining in said court a decree in favor of Calhoun declaring Violet to hold the legal title to lot 10, sec. 3, in township 11 north, range 3 west, in trust for the use and benefit of Calhoun. The court below sustained a demurrer to the petition,

and to reverse the ruling thereon the cause is brought here.

32 Briefly stated, the facts as set forth in the petition are as follows: On April 23, 1889, Calhoun filed in the Guthrie land office a homestead entry for lots 6, 7, 8, 9, and 10, sec. 3, township 11 north, range 3 west, situated in Oklahoma county, lots 6, 7, 8, and 9 of such tract lying north and lot 10 thereof lying south of the Canadian river. On February 17, 1890, the Commissioner of the General Land Office suspended the entry for the reason that the tract of land embraced therein lies on both sides of a meandered stream, and in his letter of suspension directed the local office to notify the entryman of such fact and allow him thirty days to elect which portion of his claim he would relinquish, and in the event of a failure to so elect his entry would be held for cancellation. Calhoun, under the directions contained in the letter from the Commissioner of the General Land Office, on March 7, 1890, relinquished lot 10, the part lying south of the river. Violet, immediately upon such relinquishment, filed a homestead entry therefor, and on December 29, 1893, made his final proof and received the receiver's final certificate for the tract. May 15, 1893, Calhoun filed an application to be reinstated in his homestead entry for lot 10, it having been decided in the meantime that the order requiring Calhoun's relinquishment for such lot was erroneous. No appeal was taken from the order of the Commissioner requiring Calhoun to relinquish, and no steps appear to have been taken by him to have his entry reinstated from that time of his relinquishment until he filed his application to be reinstated. Shortly after April 23, 1889, the date of Calhoun's homestead filing, numerous contests were filed against his entry, in which contests it was alleged that Calhoun was disqualified from entering lands in Oklahoma Territory by reason of being within the boundaries of the Territory, opened to settlement under the act of March 2, 1889, subsequent to that date and prior to noon of April 22 following. After Calhoun's relinquishment to lot 10 these contests appear to have been carried on only with reference to that part of the land lying north of the Canadian

33 river, which was embraced in Calhoun's entry after his relinquishment to the portion thereof lying south of such river. As the result of such contests, Calhoun's entry was finally cancelled upon the ground that he was disqualified to enter the land, and in his final decision upon the motion for review the Hon. Secretary of the Interior uses the following language:

"The testimony of Calvin A. Calhoun himself, as quoted by Messrs. Perkins & Chandler, his attorneys, on pages 17, 18 of their brief, shows that he arrived at Oklahoma Station from Arkansas City on Saturday, April 20, 1889, after dark, and remained there that night, and left for Arkansas City Sunday morning at 8.30 o'clock; that on his arrival at Oklahoma Station on Monday, April 22, 1889, he went with his son directly to the tent which his son had erected on the land in contest, and that he, the entryman, leaving his son in charge of the tent and the land, went immediately to the Guthrie land office and arrived there in time to secure homestead entry No.

19 on said land. Mr. Calhoun's own testimony is fatal to his right to make entry of said land or acquire any right thereto."

In the petition filed in the court below Calhoun alleges that he is an honorably discharged Union soldier, and attaches a copy of his discharge to such effect. It is claimed in the petition and urged as a ground of equitable relief that the Secretary of the Interior misapplied the law, first, in holding that Calhoun was disqualified by reason of being within the Territory during the inhibited period of time; and, second, that the prohibition contained in the law which excludes those violating the same from acquiring land is not applicable to an honorably discharged Union soldier. The demurrer to the petition alleges a failure to state a cause of action, and the decision of the lower court sustains the same for that reason.

We think the law properly applied to the facts as found by the Land Department is sufficient upon which to base a finding that Calhoun was disqualified to enter the land. It is well settled that a person who was within the boundaries of the land thrown open to settlement under the act of March 2, 1889 (25 Stat. U. S., 1005), subsequent to March 2, 1889, and prior to noon of April 22, 1889, and who by reason of having been therein gained an advantage over those who remained outside, is thereby disqualified from
34 acquiring any land thrown open to settlement under the provisions of the act of March 2, *supra*. Smith *v.* Townsend, 1 Okla., 117, and 148 U. S., 490. Under the facts as found by the Land Department, Calhoun had entered upon and occupied a portion of the lands thrown open to settlement under the provisions of the act of March 2, *supra*, during the inhibited time, and such facts so found are binding upon the courts. Johnson *v.* Towsley, 13 Wall., 72; Marquez *v.* Frisbie, 101 U. S., 473; Lee *v.* Johnson, 116 U. S., 48, and cases therein cited.

These facts so found by the Land Department are sufficient to defeat Calhoun's title before the Land Department and in the courts also, unless the contention of counsel be correct that honorably discharged Union soldiers are exempted from the prohibition contained in the act of March 2nd, *supra*. The provision of the law upon which counsel rely is found in sec. 13 of said act, and is as follows: "Provided that the rights of honorably discharged Union soldiers in the late civil war, as defined in sections 2304 and 2305 of the Revised Statutes, shall not be abridged." This is follows by a proviso in the same section, which second proviso reads: "And provided further that * * * until such lands are opened to settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall ever be permitted to enter any of said land or acquire any rights thereto." Counsel for appellant insist that the latter proviso has no limiting effect upon the former. We cannot assent to this contention. It is, we think, the universally accepted rule of construction that the natural and appropriate office of a proviso is to restrain and qualify some matter which precedes, and it should be so confined. Sutherland on Statutory Construction, sec. 233. If by an examination of the subject-matter of the law the intent of the

makers of the statute be ascertained, then the proviso should always be construed with reference to such intent. In the act of Congress of March 2, *supra*, we find that Congress intended in opening these lands to settlement to reserve to honorably discharged Union
35 soldiers certain rights which they then possessed under sections 2304 and 2305, Revised Statutes of the United States. In section 2304 the right was given to such soldiers to file a declaratory statement for land, which statement, when filed, should operate to reserve the land from any other filing for a period of six months. Other provisions of this section changed the law previous to its adoption in force to the extent only of permitting a soldier in person or by his agent to file a declaratory statement instead of a homestead entry, which declaratory statement should operate to reserve the land for a period of six months, at which time the soldier might file his homestead entry therefor. To that extent only did it change the law previously in force. Sec. 2305 provided that the time which the homestead settler had served in the army, navy, or marine corps might be deducted from the time theretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment should be deducted from the time theretofore required to perfect title, without reference to the length of time he may have served; but no patent in any event was to issue until the settler had resided upon, improved, and cultivated his homestead for the period of at least one year after he commenced such improvements and residence. Sec. 2305 simply modified the law previously in force to the extent of allowing a soldier to have deducted from the five years' residence upon the land required under the homestead law the time, not to exceed four years, which he had served in the Union army, navy, or marine corps, and was intended to have no other application. The proviso in sec. 13 of the act of March 2, *supra*, and which is heretofore set out, intended to reserve only such rights as above indicated to the Union soldier, and the proviso which followed intended to operate alike upon all persons who would seek lands in Oklahoma Territory, irrespective of the fact that they were or were not honorably discharged Union soldiers. The intention of Congress, as expressed by the Supreme Court of the United States in Smith *v.* Townsend, *supra*, was "to build a wall around this entire Territory,
36 and disqualify from right to acquire under the homestead law any tract within its limits every one who was not outside of the wall on April 22nd. When the hour came the wall was thrown down, and it was a race between all outside for the various tracts they might desire to take to themselves as homesteads. This law applied to all persons, irrespective of their occupation or condition. To give to the law any other effect would be to give to one class of persons a right not enjoyed by all, which would be abhorrent to our theory of government."

We conclude, therefore, first, that Calhoun disqualified himself from entering or acquiring title to the land in dispute by reason of having entered upon a portion of the lands thrown open to settlement by the act of March 2, *supra*, after the passage of such act and

prior to noon of April 22 following; and, further, that the disqualification exists as to honorably discharged Union soldiers to the same extent as it does to any other citizen.

The judgment of the lower court is affirmed. Justice Scott, having presided at the trial of the cause below, not sitting; the other justices concurring.

37 TERRITORY OF OKLAHOMA:

In the Supreme Court for the Territory Aforesaid.

CALVIN A. CALHOUN, Plaintiff in Error,
vs.
OSCAR H. VIOLET, Defendant in Error. } Petition for Rehearing.

The petitioner, Calvin A. Calhoun, plaintiff in error in the above-entitled cause, asks the honorable supreme court to grant him a rehearing in this case for the mistakes and misapprehensions of both the facts as set out in the petition filed in the court below and admitted by the demurrer filed thereto, and of the law applicable to the facts so set out and admitted, and also for the reason that one of the principal issues, which would be decisive of the case, and the previous decisions of the supreme court of the Territory of Oklahoma and of the United States upon said question and issue of law arising on the facts as set out in the petition below and admitted by the said demurrer of the defendant below and in this court.

The petitioner states that the said misapprehension of facts and law and oversight and failure to pass upon important and controlling questions, all of which were raised by the assignment of errors in said cause by the plaintiff in error and insisted on by his brief filed in the case, there being no oral argument; all of which, in the order in which they arise, the petitioner hereinafter specially sets —, together with the law as it should have been held and applied by the court. The petitioner states that the learned judge who rendered the opinion in said case has misapprehended the decision of the Land Department of the United States cited by him. He also states that the attention of the court was called to both the facts and the law applicable to the facts in the brief filed, and the authorities were cited and called to the attention of the court applicable to said facts, all of which are overlooked or misappre-
38 hended and misunderstood by the court, and the facts misapprehended and mis-tated as well as law; all of which the petitioner herein specially sets out and directs the attention of the court to the same as grounds why a rehearing should be granted.

First. The learned judge in his opinion states the facts as to the qualifications of the plaintiff in error as follows—see page 1 of opinion: "The testimony of Calvin A. Calhoun himself, as quoted by Messrs. Perkins and Chandler, his attorneys, on page 17 and 18 of their brief, shows that he arrived at Oklahoma Station from Arkansas City on Saturday, April the 20th, 1889, after dark, and remained there that night, and left for Arkansas City Sunday morning at 8.30 o'clock; that on his arrival at Oklahoma Station on

Monday, April 22nd, 1889, he went with his son directly to the tent which his son had erected on the land in controversy, and that he, the entryman, leaving his son in charge of the tent and land, went immediately to the Guthrie land office, and arrived there in time to secure homestead entry No. 19 on said land. Mr. Calhoun's own testimony is fatal to his right to make entry of said land or acquire any right thereto."

The first part of said statement, as to plaintiff in error coming to Oklahoma Station on the evening of April the 20th and returning to Arkansas City, is correct, with this addition to it, that he did not come to look after land, but to meet another party; that he, previous to the passage of the law of 1889, had become familiar with the land in that vicinity and needed no information and obtained none, and obtained no advantage whatever, all of which is distinctly alleged and set out in the petition and admitted by the demurrer, and must in passing upon the case be taken as true. See petition for statement.

The latter part of said statement, about arriving at Oklahoma Station on April 22nd and going on the land, the petitioner says is an entire mistake; no such statement is to be found in the petition. Upon the contrary, the petitioner explicitly states in his said petition, and it is admitted by the demurrer, that on the 22nd day of April, 1889, he came from Arkansas City, in the State of
39 Kansas, to Guthrie, not entering the territory to be open- until after 12 o'clock noon of said day; that he remained in Guthrie the rest of the day and made his entry of the land, and did not come to Oklahoma Station until Tuesday, the 23rd, on the train; that he did not know his son was there on the land, and that he had no arrangement with his son to go onto the land in controversy or any other land; all these allegations your petitioner states are specially and distinctly alleged; see petition; that in the determination of this case the petitioner states that the court can alone determine it on the facts as stated in the petition and admitted by the demurrer; that should the court go outside of the pleadings in the case and examine the opinions of the register and receiver of the United States Land Office, the opinion of the Commissioner of the General Land Office at Washington, D. C., and the opinion of the honorable Secretary, the court will find that in all the findings of fact it is found that the petitioner did not come to Oklahoma Station until April 23rd, 1889, and not on Monday, as stated, and the petitioner states that if any such statement is found in the brief referred to it is a mistake, which is corrected by all the opinions and the admitted facts; that the learned judge rendered his opinion disqualifying the petitioner on a misapprehension and mistake as to the facts shown by the pleadings and all the findings; that under the law as defined in the opinion which is as follows: The petitioner is duly qualified to take and hold a homestead when said law as so defined is properly applied to the facts as set out in said petition and admitted by said demurrer. The learned judge rendering said opinion defines the law as follows: "It is well settled that a person who was within the boundaries of the land thrown open to settlement under the act of March 2nd, 1889 (25 Statutes U. S., 1005),

subsequent to March 2nd, 1889, and prior to noon of April 22nd, 1889, and who by reason of having been therein gained an advantage over those who remained outside, is thereby disqualified from acquiring any land thrown open to settlement under the provisions of the act of March 2nd, *supra*."

40 The petitioner states that the foregoing is a fair statement of the law, and that the facts alleged and set out in his petition and the exhibits, which are admitted to be true and must be so treated under the demurrer, clearly show that no advantage whatever was gained or obtained by the petitioner and plaintiff in error, and that he is and was a duly qualified entryman *and* under the law as hereinbefore defined by the court, and it would and must have so found and held but for the aforesaid mistake as to the facts.

Your petitioner would respectfully point out and show to the court that in the decision and opinion rendered in construing and passing upon the rights reserved and saved to honorably discharged Union soldiers by the following proviso in section 13 of the act of Congress of March 2, 1889, which said proviso is as follows: "Provided that the rights of honorably discharged Union soldiers in the late civil war as defined in sections 2304 and 2305 of the Revised Statutes shall not be abridged."

That said proviso of section 13 of said act of Congress, which is in words and figures as follows: "And provided further that until such lands are opened to settlement by proclamation of the President no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall ever be permitted to enter any of said lands or acquire any right thereto," has been held by the supreme court of Oklahoma, in the case of Smith *vs.* Townsend, not to be a penal provision, but an additional homestead requirement and qualification, and in the same case the Supreme Court of the United States affirmed said decision and concurred in said finding and holding of the supreme court of Oklahoma as to said provision being a qualification; that the petitioner in his brief called special attention of the court to said decision and contended and argued to the court that under the aforesaid decision and holding that to add an additional qualification to honorably discharged soldiers to those required by the aforesaid provisions of the Revised Statutes

41 would be an abridgement of their rights and an express violation of said proviso, which expressly provided against such abridgement, which was entirely overlooked and not noticed or passed upon by the judge rendering said opinion.

The petitioner states that the decision of the supreme court of Oklahoma containing said prohibitory clause of section 13 of the act of Congress of March 2nd, 1889, held as follows:

"It is earnestly contended that the prohibitory clause of the act of March 2nd, 1889, is a penal law and must be construed strictly, but the clause under consideration is not a penal statute. It creates no crime and imposes no penalty. It simply prescribes the qualifications of homestead settlers on the public land mentioned in the act." Vol. 1, Oklahoma Reports, page 126, Smith *v.* Townsend.

The foregoing finding of the supreme court of Oklahoma is affirmed

and approved in the same case by the Supreme Court of the United States, 148 U. S., page —.

The petitioner further states that in construing section 2304 and 2305 of the Revised Statutes of the United States, as to the rights given thereby to honorably discharged Union soldiers, the judge rendering the opinion overlooked and wholly misapprehended the scope and extent of said sections, and the following finding of the learned judge wholly misapprehended the rights conferred by said sections 2304 in that part of his opinion which is as follows: "In the act of Congress of March 2nd, *supra*, we find that Congress intended, in the opening these lands to settlement, to reserve to honorably discharged Union soldiers certain rights which they then possessed under section 2304 and 2305, Revised Statutes of the United States." In section 2304 the right was given to such soldiers to file a declaratory statement for the land, which statement when filed should operate to reserve the land from any other filing for a period of six months. The provisions of this section changed the law previous to its adoption in force to the extent only of permitting a soldier, in person or by his agent, to file a declaratory statement instead of a homestead entry, which declaratory statement
42 should operate to reserve the land for a period of six months, at which time the soldier's right to file his homestead entry therefor —. To that extent only did it change the law previously in force."

The petitioner points out and shows to the court that the foregoing finding and statement of the learned court is a complete misapprehension of said section 2304 and of what rights it confers and what changes it makes of the law as it previously existed as to other classes of persons.

Said section 2304 does not confer the right upon honorably discharged Union soldiers to file a declaratory statement by agent. That right is given in a subsequent section of the act of Congress, section 2309 of the Revised Statutes.

The petitioner further points out and shows to the court that decision entirely misapprehended what changes said section made in the law as it previously existed and what rights it conferred on honorably discharged Union soldiers, and states only the method of securing those rights, overlooking entirely the substantive rights conferred on such soldiers by said sections. The petitioner further shows that the law as it existed previous to the adoption of said section 2304 and the subsequent modifications referred to in said section was as follows—see Revised Statutes of the United States, title, Homestead, page 419, section 2289:

"Every person who is the head of a family or who has arrived at the age of twenty-one years and is a citizen of the United States or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one quarter section or a less quantity of unappropriated public land upon which such person may have filed a pre-emption claim or which may at the time the application is made be subject to pre-emption at one dollar and twenty-five cents per acre, or eighty

acres or less of such unappropriated public lands at two dollars and fifty cents per acre, to be located in a body in conformity to the legal subdivision of the public lands and after the same have been surveyed."

The foregoing was the only homestead law in force at the time of the passage of said act of 1872 in relation to honorably discharged Union soldiers, of which section 2304 is a part; from 1862, when the act was passed of which section 2289 is a part, amendments were adopted, and the act contains many other sections relating to the method of filing, etc.

43 The petitioner states that said act of 1872, of which said section 2304 is a part, was passed solely for the benefit of honorably discharged Union soldiers, as a reward for their services, and applies to no other class of persons, and said section refers to all subsequent sections of said act as "hereinafter modified," and the modifications follow defining the acts that shall be done and performed to entitle the soldier to a patent; that said proviso in said act of March 2nd, 1889, was intended by Congress and does in express terms, so plain and explicit that no room for construction is left, there being no ambiguity, except the rights granted by said sections from all impairment and abridgement by any provision or part of said act of March 2nd, 1889.

The petitioner further shows to the court that the following rights and privileges were and are expressly conferred upon honorably discharged Union soldiers by said section 2304:

First. "That they shall, on compliance with the provisions of this chapter as hereinafter modified, be entitled to enter upon and receive patent for a quantity of public land, not exceeding one hundred and sixty acres, to be taken in compact form according to legal subdivisions, including the alternate reserved sections of public land along the line of any railroad or other public works not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States, but such homestead settler shall be allowed six months after locating his homestead and filing his declaratory statement within which to make his entry and commence his settlement and improvements."

The petitioner states and shows to the court that the primary right is conferred by said section upon the class of persons therein described as a reward for their military services, rendered to the country in the times of its peril and need, to enter upon any of the public lands of the United States not otherwise appropriated and receive a patent for a quantity not exceeding one hundred and sixty acres. This is what section 2304 entitles them to. The residue of the sections and chapter describes the manner in which they shall exercise this right, and the right to enter upon and take one hundred and sixty acres of land in manner as described in said sections and act is the right that Congress provides shall not be abridged. The court has wholly ignored this right and privilege and limits the proviso to one of the mere acts to be done.

44 It denies the right and attempts to limit the intent of Congress as granting and intending to grant only an empty mode of

procedure, mistaking and construing the substance, intent, and purpose of Congress. The case of Smith *v.* Townsend is cited by the court in support of the theory that the provisions of the prohibitory clause of the act of Congress of March 2nd, 1889, applies to all persons, and that honorably discharged Union soldiers are not excepted from its provisions; but the court has also overlooked and misapprehended an important part of that decision of the Supreme Court of the United States, in this: That high court of last resort and the learned and able jurist who delivered that opinion, in discussing the question of whether or not officers of the United States and persons on the right of way in the employ of the railroad passing through the lands to be opened were within the spirit and letter of the prohibition, says: "If Congress had intended to except them or any class, it would have said so." In the case of honorably discharged soldiers it did say so, and expressly provided that their rights as defined by sections 2304 should not be abridged. The decision of the court does take away and deprive them of the main right and privilege granted them, to wit, the right to enter upon and take one hundred and sixty acres and receive, on certain conditions, a patent for the same. The court abridges their right by adding an additional qualification not required by section- 2304 and 2305 of the Revised Statutes of the United States. The language of Judge Brewer in the opinion is as follows, speaking of the intent of Congress: "It must be presumed to have known that on the right of way were many persons properly and legally there; it must also have known that many other persons were rightfully in the Territory as Indian agents, deputy marshals, mail-carriers, and many others, and if it intended that these parties, thus rightfully in the Territory on the day named, should have special advantage in the entry of tracts they desired for occupancy, it would have been very easy to have said so."

The petitioner says and shows to the court that under section-
2304 and 2305 special rights and privileges were given to
45 honorably discharged soldiers, for the reasons hereinbefore
stated, not given to any other persons, and intended to give to such soldiers, and did so give, the right to enter upon and homestead, in the special manner set out, on any class of public lands owned by the United States and not otherwise appropriated, one hundred and sixty acres of such lands; and Congress does say by the proviso aforesaid that none of their rights shall be abridged, leaving the right so granted unaffected by the act of Congress of March 2nd, 1889, and to be exercised in manner as provided in said sections 2304 and 2305. The petitioner states that the decision rendered in this case wholly nullifies and disregards the exception made by Congress and the rights of such soldiers, and wholly overlooks the provisions of the aforesaid sections, and attempts to virtually repeal and limit said proviso and wholly misconstrue *its* scope, effect, and purpose thereof.

The petitioner points out and shows that the court erred and overlooked the direct decision of the Supreme Court of the United States as to the office and effect of provisions, said decision and

numerous other authorities being cited in the brief of petitioner and plaintiff in error, but were either overlooked or ignored in said decision, and the decision is contrary to the current of authorities and the decisions of the Supreme Court of the United States. In the case of Lysander *vs.* Bobbitt *et al.*, 1 Black, U. S. R., page 55 to 62, which defines the office of a proviso in an analogous case, where it was intended to apply to a certain class of persons as in the case under consideration, the Supreme Court say: "We are of opinion that the proviso referred to is not limited in its effect to the section where it is found, but that is was affirmed by Congress as an independent proposition and applies alike to all officers of this class."

So in this case the proviso is an independent proposition, preserving all the rights of the class of persons named therein from being in any manner limited or abridged by anything contained in said act of March 2nd, 1889, and left the rights of such persons unimpaired under the aforesaid sections of the law of 1872 given-
46 honorably discharged soldiers, in consideration of their services, the rights and privileges therein enumerated.

The petitioner states that the court erred and misapprehended the law in its definition of the office and purpose of a proviso and in holding that it only related to the portion of the act which preceded it. The learned judge cited section 233 of Sutherland on the Construction of Statutes, but wholly overlooked sections 273, 275, 218, 222, 225, cited and called to the attention of the court in brief of plaintiff in error, where the effect and limitations of provisos are fully discussed and numerous decisions of the courts referred to by the same author and in the same volume. The honorable judge rendering the opinion entirely overlooked the qualifications to the general proposition he lays down, and entirely overlooked the relation of the proviso referred to and its purpose. Black on Interpretation of Law, page 271, title, Proviso, says: "The office of a proviso is not to enlarge or extend the act or the section of which it is a part, but rather to put a limitation upon the general words the legislature has employed," and cites the matter of Weble, 24 Howard's Practice, 247. In this case the proviso limits the provisions of section 13 of the act of March, 1889, from having any application to honorably discharged soldiers such as described in sections 2304 of the Revised Statutes—that is its sole purpose in the section of which it is a part—and it applies to all their rights and not, as the learned judge claims, to one single provision relating to the mode of exercising their rights. Black on Construction of Laws, discussing the office of a proviso and its relation to what preceed-s and what follows, says: "Hence the proviso may qualify the whole or any part of the act or it may stand as an independent proposition or rule if such is clearly seen to be the meaning of the legislature as disclosed by an examination of the entire enactment," and refers to the case *supra*, United States *vs.* Bobbitt *et al.*, 1st Black, page 55.

The petition states that the only purpose and object of said proviso, when considered in connection with the entire act of March
47 2nd, 1889, is to restrain and limit said act from in any manner affecting or abridging the rights of the class of persons

mentioned, as defined by the aforesaid sections of the Revised Statutes of the United States, and from *applying* any of the additional qualifications and prohibitions of said act from being applied to honorably discharged Union soldiers; that the court in its decision has wholly misunderstood and misconstrued the law.

The learned judge misapprehended and misstates the purpose of said proviso in saying it was only intended to preserve certain rights; there are no words of limitation in said proviso; it clearly says, all rights as defined by sections 2304 and 2305 of the Revised Statutes. In the language of Judge Brewer, if Congress had intended it to apply only to the matters enumerated by the learned judge, it would have said so by naming them. The learned judge in his opinion said, to give the law any other construction than that given by him would be to give one class of persons a right not enjoyed by all, which would be abhorrent to our theory of government.

Under this theory the entire act of 1872 and all pension laws would be abhorrent and void, as they were intended and do give to Union soldiers certain rights as a class not given to all. This is the purpose and object of the law, to give them these special rights as a reward for their services and sufferings and disabilities incurred in the service of their country. We respectfully contend that laws giving such special rights and privileges commend themselves to all who duly consider them as based on justice and right and are calculated to inspire feelings of patriotism and love of a nation dealing thus with its citizen soldiers.

In all the foregoing particulars, as well as many others, we respectfully insist that the court has misunderstood and misapplied the law, and that said decision is contrary to the law and equity and right of the case and based on a misconception of the rules of interpretation applied to the construction of statutes; on a misapprehension of the allegations of the petition, which must be
48 taken and treated as true under the demurrer, and a misunderstanding of the law applicable to the facts as admitted in the particulars hereinbefore stated.

Wherefore the petitioner asks that a rehearing be granted and an opportunity given to further brief and orally argue the questions involved.

AMOS GREEN & SON,
Attorneys for Petitioner.

Endorsed: Case No. 435. Calvin A. Calhoun *vs.* Oscar H. Violet. Petition for rehearing. We acknowledge service of a copy of the within petition. Sept. 21st, 1896. Douglas & Douglas, attorneys for Violet. Filed Sept. 22, 1896. Edgar W. Jones, clerk supreme court. Amos Green & Son, attorneys for petitioner.

49 CALVIN A. CALHOUN, Appellant,
v.
OSCAR H. VIOLET, Appellee. } #435.

And now, to wit, on this the eleventh day of January, A. D. 1897, the above cause having come on for decision upon a motion for rehearing, and the court being fully advised in the premises, it is therefore considered, ordered, and adjudged that the said motion be, and the same is hereby, denied. Exception to this ruling is taken by counsel for appellant, and sixty days' time is given in which to prepare an appeal to the Supreme Court of the United States.

50 TERRITORY OF OKLAHOMA:

In the Supreme Court of said Territory.

CALVIN A. CALHOUN, Appellant,
vs.
OSCAR H. VIOLET, Appellee. } In Equity. Petition.

The above-named appellant, conceiving himself aggrieved by the judgement, orders, and decree made and entered in the above-entitled cause by the supreme court of the Territory of Oklahoma, for the reasons specified in the assignment of error filed and in the petition for a rehearing and the assignment of error filed, herewith prays that he may be allowed an appeal to the Supreme Court of the United States, and that a transcript of the record and proceedings and exhibits upon which said order, judgement, and decree were made, duly authenticated, may be certified to the Supreme Court of the United States, District of Columbia.

FRED BEALL AND
AMOS GREEN & SON,
Attorneys for Appellant.

The foregoing petition of appeal is allowed August 26th, 1897.

FRANK DALE,
Chief Justice Supreme Court, Territory of Oklahoma.

51 Filed Aug. 26, '97.

EDGAR W. JONES,
Clerk Sup. Court.

52 UNITED STATES OF AMERICA:

Supreme Court of the United States.

CALVIN A. CALHOUN, Appellant,
vs.
OSCAR H. VIOLET, Appellee. } Assignment of Error.

And now comes Calvin A. Calhoun, appellant, and says that in the decree, judgement, and orders made in the above-entitled cause, in the supreme court of the Territory of Oklahoma, many and

manifest errors have intervened to the great prejudice of the rights of the appellant, and that said decree, judgement, and rulings are erroneous for the following reasons:

First. The court erred in sustaining the demurrer interposed to the petition of the appellant and in holding that said petition did not state facts sufficient in law to constitute a cause of action against the appellee.

Second. The court erred in holding that under the facts as stated in said petition and admitted by the demurrer thereto that appellant was disqualified to take and hold a homestead in the lands opened to homestead settlement, in the Territory of Oklahoma, under the acts of Congress of March first and March second, 1889.

Third. The court erred in holding that the additional qualification provided for in section thirteen of the act of Congress of March second, 1889, defining the qualifications of persons authorized and qualified to take homesteads under the provisions of said act of Congress of 1889, applied to honorably discharged Union soldiers, as defined in section 2304 and 2305 of the Revised Statutes of the United States, which were and *an exception* by an express proviso in said section thirteen of said act of Congress; which said proviso is as follows:

"And provided further that the rights of honorably discharged Union soldiers and sailors in the late civil war as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes shall not be abridged."

Fourth. The court erred in holding that any entry for any purpose into the Territory to be opened to settlement under the act of Congress of March 2nd, 1889, after the passage of said act and prior to twelve o'clock noon of April 22nd, 1889, disqualified forever the person so entering from taking and holding at any time a homestead in any of said lands.

53 Fifth. The court erred in stating the facts set out in the petition of the appellant and the law applicable to the facts as set out in said petition and admitted by the demurrer.

Sixth. The court erred in holding and ruling that appellant lost all his rights to the land because the appellant was forced by the mistaken and illegal order, issued by the Commissioner of the General Land Office under the erroneous opinion that the North fork of the Canadian river was a meandered stream, and requiring appellant to relinquish the land on one side or the other of said stream under penality of having his entry cancelled, which relinquishment, as the petition shows, was made under protest of appellant, and as soon as the error was discovered the appellant filed his application to set aside said forced, illegal, and mistaken relinquishment and reinstate appellant's filing and entry, which application was still pending and undisposed of in the Land Department when the register and receiver of the United States land office at Oklahoma City permitted the appellee to make entry of the land, said appellee at the time having full notice of all the facts.

Seventh. The court erred in applying the law to the facts as set out in appellant's petition.

Eighth. The judgement and decree of the court below is contrary to the law, equity, and facts of the case.

Wherefore the appellant prays that the judgement, rulings, and decree of the court below be reversed, set aside, and vacated, and for all other and further relief.

FRED BEALL, *Attorney.*
AMOS GREEN & SON,
Of Counsel for Appellant.

54 Filed Aug. 26, '97.

EDGAR W. JONES,
Clerk Sup. Court.

55 TERRITORY OF OKLAHOMA:

In the Supreme Court of the Aforesaid Territory.

CALVIN A. CALHOUN, Appellant,
vs.
OSCAR H. VIOLET, Appellee.

Know all men by these presents that Calvin A. Calhoun, as principal, and Frank Menton and J. W. Evarts, as sureties, are held and firmly bound to the officers of the courts and the appellee to pay all costs which may accrue in the above-entitled case should said appellant fail to prosecute his said appeal with effect and which may be adjudged against said appellant; for the payment of which we bind ourselves and each of us, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this —day of March, 1897.

The condition of the above obligation is such that whereas the above-bounden Calvin A. Calhoun has prosecuted an appeal to the Supreme Court of the United States to reverse a judgement and decree rendered in the above-entitled case by the supreme court of Oklahoma Territory, now if the said Calvin A. Calhoun shal

56 prosecute said appeal to effect and pay all costs if he fail to make said appeal good, then this obligation shall be void otherwise to remain in full force and effect.

CALVIN A. CALHOUN. [SEAL.]
F. MENTON. [SEAL.]
J. W. EVARTS. [SEAL.]

57 TERRITORY OF OKLAHOMA, } *ss.*
County of Oklahoma, }

In the Supreme Court of the Aforesaid Territory.

CALVIN A. CALHOUN, Appellant,
vs.
OSCAR H. VIOLET, Appellee.

I, Frank Menton, being first duly sworn, on oath says that he is worth, and reasonably worth, the sum of three hundred dollars over and above all just claims, liabilities, debts, and exemptions; that

affiant's property consists of following: Merchandise at Oklahoma City.

FRANK MENTON.

Subscribed and sworn to before me this 8 day of March, 1897.

[Seal County Clerk, Oklahoma County, Okla. Ter.]

R. F. CAFFREY,
County Clerk.

58 TERRITORY OF OKLAHOMA, } *ss:*
County of Oklahoma, }

In the Supreme Court of the Aforesaid Territory.

CALVIN A. CALHOUN, Appellant, }
vs.
OSCAR H. VIOLET, Appellee. }

I, J. W. Evarts, being first duly sworn, on oath says that he is well and reasonably worth the sum of three hundred dollars over and above all just claims, liabilities, debts, and exemptions; that affiant's property consists of the following: Real estate in Oklahoma City, O. T.

J. W. EVARTS.

Subscribed and sworn to before me this 9 day of March, 1897.

[Seal County Clerk, Oklahoma County, Okla. Ter.]

R. F. CAFFREY,
County Clerk.

59 Filed and apro. Aug. 26, '97.

EDGAR W. JONES,
Clerk Supreme Court.

60 UNITED STATES OF AMERICA, *ss:*

United States Supreme Court.

To Oscar H. Violet, appellee, Greeting:

You are hereby cited and admonished to be and appear at and before the United States Supreme Court, at Washington city, District of Columbia, in 30 days next after the service of this citation, to answer an appeal taken and filed in the clerk's office of the United States Supreme Court from the supreme court of the Territory of Oklahoma, wherein Calvin A. Calhoun was plaintiff in error and you were defendant in error, to show cause, if any there be, why the judgement rendered against the said plaintiff in error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 26th day of August, in the year of our Lord one thousand eight hundred and ninety-seven, and the Independence of the United States of America one hundred and twenty first.

FRANK DALE,
Chief Justice Supreme Court
of the Territory of Oklahoma.

Service hereof hereby accepted October 4, 1897.

DOUGLAS & DOUGLAS,
Att'ys for Appellee.

61 Filed Aug. 26, '97.

EDGAR W. JONES, *Clerk.*

62 UNITED STATES OF AMERICA, } ss:
Territory of Oklahoma, }

I, Edgar W. Jones, clerk of the supreme court of the Territory of Oklahoma, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in a case therein, entitled Calvin A. Calhoun, plaintiff in error, *vs.* Oscar H. Violet, defendant in error, as the same appears of record and on file in my office.

In testimony whereof I have hereunto subscribed my name and caused the seal of the said court to be affixed, at my office, on this the — day of August, A. D. 1897, and of the Independence of the United States of America the one hundred twenty-second.

[Seal Supreme Court, Territory of Oklahoma.]

EDGAR W. JONES,
Clerk of the Supreme Court.

Endorsed on cover: Case No. 16,691. Oklahoma Territory supreme court. Term No., 180. Calvin A. Calhoun, appellant, *vs.* Oscar H. Violet. Filed October 11, 1897.